

No. 107

APPLICATION FOR TAX DEED—FORM OF NOTICE—
TAXATION

Held: Notice of application for tax deed should contain original tax, penalty and interest as separate items, with notice that any person having an equitable or legal interest in the real estate may redeem from the tax sale at any time before tax deed is taken by paying the original taxes only.

May 2, 1941.

Mr. Oscar C. Hauge
County Attorney
Hill County
Havre, Montana

Dear Mr. Hauge:

You have submitted the question; What amount should be stated in the notice of application for tax deed under Section 2209, Revised Codes of Montana, 1935, and Chapter 11, Session Laws of 1939, and Chapter 13, Laws of 1941?

The part of Section 2209, Revised Codes of Montana, 1935, pertinent to your inquiry is as follows:

“Section 2209. Notice of application for tax deed. The purchaser of property sold for delinquent taxes or his assignee must, at least sixty (60) days, previous to the expiration of the time for redemption, or at least sixty (60) days before he applies for a deed, serve upon the owner of the property purchased, if known, and upon the person occupying the property, if the said property is occupied, and, if the records in the office of the County Clerk and Recorder show an unreleased mortgage or mortgages upon the property purchased, upon the mortgagee or mortgagees named in said mortgage or mortgages, or if assigned, upon the assignee or assignees of said mortgage or mortgages, a written notice, stating that said property, or a portion thereof, has been sold for delinquent taxes, giving the date of sale, the amount of property sold, the amount for which it was sold, the **amount due**, and the time when the right of redemption will expire, or when the purchaser will apply for a tax deed, and the owner of the property, or the mortgagee, or the assignee of said mortgage has the right of redemption indefinitely until such notice has been given and the deed applied for, upon the payment of fees, percentages, penalties and costs required by law. Notice of any owner, mortgagee or assignee of mortgagee shall be given by registered letter addressed to such mortgagee or assignee at the post office address of said owner, mortgagee or assignee as disclosed by the mortgage records in the office of the County Clerk and Recorder. . . .” (Emphasis mine.)

The form of the “Notice of Application for Tax Deed,” which is to be substantially followed, is set out; that is, the form used must contain at least the substance as prescribed.

In referring to Chapter 11, Laws of 1939, we find it provides that any person having an equitable or legal interest in the property sold to the county, and where no assignment of the certificate of sale had been made, could redeem by paying the original tax without penalty and interest. Later on it provides that this Act shall not apply to the holder of any certificate of sale other than a county. This chapter does not carry any repealing clause and became effective February 7, 1939.

At the same session was passed Chapter 24, Laws of 1939, providing for assignments of tax sale certificates and providing for the rate of interest thereon. This Act became effective February 15, 1939, after Chapter 11, supra, and carried the repealing clause. At the same session was passed Chapter 25, Laws of 1939, providing for the redemption from tax sales and for the interest to be paid, etc. This Act became effective February 15, 1939, subsequent to Chapter 11, supra, and carried the repealing clause.

By comparing Chapter 70, Laws of 1937, with Chapter 11, Laws of 1939, and Chapter 13, Laws of 1941, it is apparent the legislature's intent has changed considerably. See Opinion No. 34, Volume 19, Report and Official Opinions of the Attorney General.

Chapter 13, Laws of 1941, became effective February 18, 1941. The pertinent part of your inquiry is as follows:

"Section 1. That from and after the passage and approval of this Act, any person having an equitable or a legal interest in real estate heretofore struck off to any county when such property was offered for sale for delinquent taxes and certificate of such sale issued to the county and when no assignment of such certificate has been made, or on which the taxes are delinquent for the first installment of the year 1940, shall be permitted to redeem the same by paying the original taxes due thereon, without the payment of any penalty or interest thereon, provided such redemption be made on or before the thirty-first day of May, 1942."

It will be noted that chapter 13, Laws of 1941, provides for assignments of the certificates of sale, and that the boards of county commissioners are to proceed to order application to be made for the issuance of tax deeds, and the issuance of tax deeds to counties and the assignments of tax sales certificates as now provided by law to the same extent and effect as though this Act had not been passed; and the tax deed extinguishes all rights of redemption on the part of the former owners, divests them of all interest in the property and creates a new title.

Further, Chapter 13, Laws of 1941, provides that any person having an equitable or legal interest in real estate heretofore struck off to any county for delinquent taxes or on which the taxes are delinquent for the first installment of 1940 shall be permitted to redeem the same by paying the original taxes due thereon, without paying any penalty or interest thereon, provided the county has not assigned the tax sale certificate thereon, or issued a deed thereto and that said redemption is made on or before the 31st day of May, 1942.

It must also be borne in mind that Section 2235, Revised Codes of Montana, 1935, as amended by Chapter 181, Laws of 1939, was amended by Chapter 171, Laws of 1941, which Chapter was approved and became effective on March 19, 1941, subsequent to Chapter 13, Laws of 1941.

It will be noted that Chapter 171, Laws of 1941, provides, among other things, as follows:

"provided further, that at any time before the date fixed for such sale, notice of which has been given as above provided, the taxpayer or successor in interest whose property has been deeded to the county may purchase such property subject to the reservations hereinafter provided by payment to the county of the full amount of the taxes, penalties and interest due on said land at the time of taking said tax deed and such purchase and payment may be effected by an installment contract with annual payments as hereinafter provided."

See Attorney General's Opinions No. 42, Volume 19, and Attorney General's Opinion No. 64, Volume 19.

All of these laws dealing with tax sales, assignments of tax sale certificates, procedure for procuring tax deeds and preference rights in regard to payment of taxes and the purchase from the county after tax deed must be read together and effect given to each as the Legislature intended, if possible.

"In construing statutes, every statute must be given effect, when possible."

State v. Callow, 78 Mont. 308, 254 Pac. 187.

In order to provide for each of the contingencies provided by the chapters above quoted and to give effect to each thereof, it is my opinion the "Notice of Application for Tax Deed" should contain the following:

NOTICE OF APPLICATION FOR TAX DEED

Notice is hereby given that the undersigned will on the..... day of....., 19....., apply to the county treasurer of..... County, Montana, for a tax deed to the following described property, to-wit:

(Describe property)

Amount due: \$.....original tax only
 \$.....penalty
 \$.....interest.

Provided that any person having an equitable or legal interest in the above described real estate may redeem the same at any time before the tax deed is taken by paying the original taxes in the sum of \$..... only and without the payment of any penalty or interest thereon.

Date.....

Applicant

By following substantially the above form, county treasurers will be, in my opinion, complying with all laws relative to the subject, including Section 2235, Revised Codes of Montana, 1935, as amended by Chapter 171, Laws of 1941, and Section 2209, Revised Codes of Montana, 1935.

Sincerely yours,

JOHN W. BONNER
 Attorney General